

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

Blue Spike, LLC,

*Plaintiff,*

v.

Texas Instruments, Inc., et al.,

*Defendants.*

CASE NO. 6:12-cv-499 MHS

LEAD CASE

Jury Trial Demanded

---

Blue Spike, LLC,

*Plaintiff,*

v.

Asure Software, Inc.,

*Defendant.*

CASE NO. 6:13-cv-044 MHS

CONSOLIDATED CASE

Jury Trial Demanded

---

**PLAINTIFF'S REPLY IN RESPONSE TO  
DEFENDANT ASURE SOFTWARE'S COUNTERCLAIMS**

Plaintiff Blue Spike, LLC ("Blue Spike") files this Reply to the Counterclaims of Defendant Asure Software, Inc. ("Asure" or "Defendant") (Case No. 6:12-cv-044, Dkt. No. 531) as follows. All allegations not expressly admitted or responded to by Blue Spike are denied.

**THE PARTIES**

1. Blue Spike admits the allegations of Paragraph 1, upon information and belief.
2. Blue Spike admits the allegations of Paragraph 2.
3. Blue Spike admits that it is asserting patent infringement claims against Defendant.
4. Blue Spike admits the allegations of Paragraph 4.
5. Blue Spike admits the allegations of Paragraph 5.

### **JURISDICTION AND VENUE**

6. Blue Spike admits the allegations of Paragraph 6.
7. Blue Spike admits the allegations of Paragraph 7.
8. Blue Spike admits the allegations of Paragraph 8.

### **FIRST COUNTERCLAIM: DECLARATORY JUDGMENT OF NON-INFRINGEMENT OF THE '175 PATENT**

9. Blue Spike repeats and incorporates by reference its responses to the allegations contained in Paragraphs 1 through 8 above.
10. Blue Spike admits the allegations of Paragraph 10.
11. Blue Spike denies the allegations of Paragraph 11.
12. Paragraph 12 does not contain any allegations requiring an admission or denial, but to the extent Defendant is alleging that it does not infringe any claim of the '175 Patent, Blue Spike denies same.

### **SECOND COUNTERCLAIM: DECLARATORY JUDGMENT OF INVALIDITY OF THE '175 PATENT**

13. Blue Spike repeats and incorporates by reference its responses to the allegations contained in Paragraphs 1 through 8 above.
14. Blue Spike admits the allegations of Paragraph 14.
15. Blue Spike denies the allegations of Paragraph 15.
16. Paragraph 16 does not contain any allegations requiring an admission or denial, but to the extent Defendant is alleging that the claims of the '175 Patent are invalid, Blue Spike denies same.

**THIRD COUNTERCLAIM: DECLARATORY JUDGMENT OF  
NON-INFRINGEMENT OF THE '494 PATENT**

17. Blue Spike repeats and incorporates by reference its responses to the allegations contained in Paragraphs 1 through 8 above.
18. Blue Spike admits the allegations of Paragraph 18.
19. Blue Spike denies the allegations of Paragraph 19.
20. Paragraph 20 does not contain any allegations requiring an admission or denial, but to the extent Defendant is alleging that it does not infringe any claim of the '494 Patent, Blue Spike denies same.

**FOURTH COUNTERCLAIM: DECLARATORY JUDGMENT OF  
INVALIDITY OF THE '494 PATENT**

21. Blue Spike repeats and incorporates by reference its responses to the allegations contained in Paragraphs 1 through 8 above.
22. Blue Spike admits the allegations of Paragraph 22.
23. Blue Spike denies the allegations of Paragraph 23.
24. Paragraph 24 does not contain any allegations requiring an admission or denial, but to the extent Defendant is alleging that the claims of the '494 Patent are invalid, Blue Spike denies same.

**FIFTH COUNTERCLAIM: DECLARATORY JUDGMENT OF  
NON-INFRINGEMENT OF THE '700 PATENT**

25. Blue Spike repeats and incorporates by reference its responses to the allegations contained in Paragraphs 1 through 8 above.
26. Blue Spike admits the allegations of Paragraph 26.
27. Blue Spike denies the allegations of Paragraph 27.

28. Paragraph 28 does not contain any allegations requiring an admission or denial, but to the extent Defendant is alleging that it does not infringe any claim of the '700 Patent, Blue Spike denies same.

**SIXTH COUNTERCLAIM: DECLARATORY JUDGMENT OF  
INVALIDITY OF THE '700 PATENT**

29. Blue Spike repeats and incorporates by reference its responses to the allegations contained in Paragraphs 1 through 8 above.

30. Blue Spike admits the allegations of Paragraph 30.

31. Blue Spike denies the allegations of Paragraph 31.

32. Paragraph 32 does not contain any allegations requiring an admission or denial, but to the extent Defendant is alleging that the claims of the '700 Patent are invalid, Blue Spike denies same.

**SEVENTH COUNTERCLAIM: DECLARATORY JUDGMENT OF  
NON-INFRINGEMENT OF THE '472 PATENT**

33. Blue Spike repeats and incorporates by reference its responses to the allegations contained in Paragraphs 1 through 8 above.

34. Blue Spike admits the allegations of Paragraph 34.

35. Blue Spike denies the allegations of Paragraph 35.

36. Paragraph 36 does not contain any allegations requiring an admission or denial, but to the extent Defendant is alleging that it does not infringe any claim of the '472 Patent, Blue Spike denies same.

**EIGHTH COUNTERCLAIM: DECLARATORY JUDGMENT OF  
INVALIDITY OF THE '472 PATENT**

37. Blue Spike repeats and incorporates by reference its responses to the allegations contained in Paragraphs 1 through 8 above.

38. Blue Spike admits the allegations of Paragraph 38.

39. Blue Spike denies the allegations of Paragraph 39.

40. Paragraph 40 does not contain any allegations requiring an admission or denial, but to the extent Defendant is alleging that the claims of the '472 Patent are invalid, Blue Spike denies same.

#### **EXCEPTIONAL CASE**

41. Blue Spike denies the allegations of Paragraph 41.

#### **PRAYER FOR RELIEF**

Blue Spike denies that Defendant is entitled to any of the relief it requests.

#### **PLAINTIFF'S PRAYER FOR RELIEF**

In addition to the relief requested in its Original Complaint, Blue Spike respectfully requests a judgment against Defendant as follows:

- (a) That Defendant take nothing by its Counterclaims;
- (b) That the Court award Blue Spike its costs and attorneys' fees incurred in defending against these Counterclaims; and
- (c) Any and all further relief for Blue Spike as the Court may deem just and proper.

/s/ Randall T. Garteiser  
Randall T. Garteiser  
Texas Bar No. 24038912  
rgarteiser@ghiplaw.com  
Christopher A. Honea  
Texas Bar No. 24059967  
chonea@ghiplaw.com  
Christopher S. Johns  
Texas Bar No. 24044849  
cjohns@ghiplaw.com  
Kirk J. Anderson  
California Bar No. 289043

Peter S. Brasher  
California Bar No. 283992  
**GARTEISER HONEA, P.C.**  
44 North San Pedro Road  
San Rafael, California 94903  
Telephone: (415) 785-3762  
Facsimile: (415) 785-3805

*Counsel for Blue Spike LLC*

**CERTIFICATE OF SERVICE**

I, Randall T. Garteiser, am the ECF User whose ID and password are being used to file this document. I hereby certify that all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system per Local Rule CV-5(a)(3) on this day. Pursuant to Federal Rule of Civil Procedure 5, this document was served via U.S. Mail and electronic means to counsel for Defendant that are not receiving this document via CM/ECF.

/s/ Randall T. Garteiser

Randall T. Garteiser